

Order

Michigan Supreme Court
Lansing, Michigan

March 9, 2005

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2004-53

Proposed Amendment of
Rules 9.124 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 9.124 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 9.124 Procedure for Reinstatement

(A) [Unchanged.]

(B) Petitioner's Responsibilities.

- (1) Separately from the petition for reinstatement, the petitioner must serve only upon the administrator a personal history affidavit. The affidavit is to become part of the administrator's investigative file and may not be disclosed to the public except under the provisions of MCR 9.126. The ~~affidavit must contain the~~ following information must be attached to or contained in the affidavit:

(a) [Unchanged.]

- (b) employment history since the time of disqualification, including the nature of employment, the name and address of every employer, the duration of such employment, and the name of the petitioner's immediate supervisor at each place of employment; if requested by the grievance administrator, the petitioner must provide authorization to obtain a copy of the petitioner's personnel file from the employer;

(c)-(e) [Unchanged.]

(f) copies of the petitioner's personal and business federal, state, and local tax returns from the date of disqualification until the filing of the petition for reinstatement, and if the petitioner owes outstanding income taxes, interest and penalties, the petitioner must provide a current statement from the taxation authority of the current amount due; if requested by the grievance administrator, the petitioner must provide a waiver granting the grievance administrator authority to obtain information from the tax authority;

~~(f)-(j)~~ [Paragraphs (f)-(j) are relettered (g)-(k) but otherwise unchanged.]

~~(k)~~(l) whether there are any outstanding judgments against the petitioner; the petitioner must provide copies of the complaints and any judgments or orders of dismissal in such cases;

~~(l)~~(m) whether the petitioner was a defendant or a witness in any criminal case, and the title, docket number, and court in which such case occurred; the petitioner must provide copies of the complaints and any judgment of convictions or orders of dismissals in such cases;

(n) whether the petitioner was subject to treatment or counseling for mental or emotional disabilities, or for substance abuse or gambling addiction since the time of disqualification; if so, the petitioner must provide a current statement from the petitioner's service provider setting forth a diagnosis of the petitioner's condition and prognosis for recovery.

(2)-(5) [Unchanged.]

- (C) Administrator's Responsibilities. Within 14 days after the commission receives its copy of the petition for reinstatement, the administrator shall submit to the Michigan Bar Journal for publication a notice briefly describing the nature and date of the discipline, the misconduct for which the petitioner was disciplined, and the matters required to be proved for reinstatement. The administrator shall investigate the petitioner's eligibility for reinstatement before a hearing on it, report the findings in writing to the board and the hearing panel within 56 days of the date the board assigns the petition to the hearing panel, and serve a copy on the petitioner. For good cause, the hearing panel may allow the administrator to file the report at a later date, but in no event later than 7 days before the hearing. The report must summarize the facts of all previous misconduct and the available evidence bearing on the petitioner's eligibility for reinstatement. The report is not a pleading and part of the record but does not serve to restrict the administrator parties in the presentation of relevant evidence at the hearing. Any evidence omitted from the report or received by the administrator subsequent to the filing of the report must be disclosed promptly to the hearing panel and the petitioner.

(D)-(E)[Unchanged.]

Staff Comment: The proposed amendments of MCR 9.124(B)(1) would expand the information a petitioner for reinstatement is required to include in or attach to the petitioner's personal history affidavit. The proposed amendment of subrule (b) would add a requirement that the petitioner, at the grievance administrator's request, provide authorization for the grievance administrator to obtain a copy of the petitioner's personnel file regarding any employment held since the time of disqualification. The proposed amendment of subrule (f) would require a petitioner to attach copies of petitioner's tax returns from the date of disqualification to the date of the petition for reinstatement. The proposed amendment of subrule (l) would add a requirement that a petitioner provide copies of any civil complainants and judgments or orders with respect to any outstanding civil judgments against the petitioner. According to the proposed amendment of subrule (m), a petitioner would be required to provide copies of criminal complaints and judgments of conviction or dismissals for any criminal case in which the petitioner was a defendant or a witness. Subrule (n) would require a petitioner to state on his personal history affidavit whether, since the date of disqualification, the petitioner received treatment for mental or emotional disabilities or substance abuse or gambling addiction. If the petitioner received such treatment, the petitioner would be required to provide a statement from the service providers that contained a diagnosis of the condition and prognosis for recovery.

The proposed amendment of 9.124(C) simply codifies what already occurs in hearings on petitions for reinstatement and appeals from decisions following those hearings.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2004-53. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 9, 2005 ³ Angie Z. Meyer
Deputy Clerk